REMARKS

This Application has been carefully reviewed in light of the Office Action. Applicants respectfully request reconsideration and favorable action in this case.

Section 101 Rejections of Claims 10 and 14

The Office Action rejects Claims 10 and 14 under 35 U.S.C. § 101 and contends that the claimed invention is directed to non-statutory subject matter. Applicants respectfully traverse these rejections.

First, when an abstract idea is reduced to a practical application, the abstract idea no longer stands alone if the practical application of the abstract idea produces a useful, concrete, and tangible result. This then satisfies the requirements of 35 U.S.C. § 101. *See In re Alappat*, 33 F.3d 1526, 1544, 31 U.S.P.Q. 2d 1545, 1557 (Fed. Cir. 1994); *see also State Street Bank & Trust Co. v. Signature Financial Group, Inc.*, 149 F.3d 1368, 1373, 47 U.S.P.Q. 2d 1596, 1601-02 (Fed. Cir. 1998). Thus, producing a useful, concrete, and tangible result is the key to patentability according to *State Street* and other applicable case law. Claims 10 and 14 clearly recite a useful, concrete, and tangible result by disclosing "returning a result of the transaction to the software application." Therefore, Claims 10 and 14 are directed to patentable subject matter.

Second, in rejecting Claims 10 and 14, the Office Action contends that "a transmission medium cannot be said to be a computer readable storage medium or computer-readable medium." *See Office Action*, page 15. Applicants respectfully traverse this contention. For example, it is a well settled principle of patent law that electrical signals constitute statutory subject matter. *See MPEP 2106(IV)(B)(1)(c)*, page 2100-14, citing *O'Reilly v. Morse*, 56 U.S. 62. Furthermore, the Official Gazette Notice of November 22, 2005, Annex IV(c) states:

> On the other hand, from a technological standpoint, a signal encoded with functional descriptive material is similar to a computer-readable memory encoded with functional descriptive material, in that they both create a functional interrelationship with a computer. In other words, a computer is able to execute the encoded functions, regardless of whether the format is a disk or a signal.

According to the above-quoted statement in the OG, the signal merely needs to be encoded with functional descriptive material in order to be similar to a computer-readable memory encoded with functional descriptive material. Clearly, Claims 10 and 14 include a signal encoded with functional descriptive material. Accordingly, the Office Action's reliance on a transmission medium irrelevant.

Assuming for the sake of argument that the law requires something more than a useful, concrete, and tangible result (which, as described above, it does not), Applicants believe that the above-quoted statement in the OG is the proper interpretation of the law and decline to amend the claims at this time. If the rejection of Claims 10 and 14 under 35 U.S.C. § 101 was the only issue remaining in the Application, Applicants would consider amending one or more of Claims 10 and 14 according to a suggestion from the Examiner to expedite issuance of a patent from this Application. However, given that the Examiner has not provided such a suggestion and, as discussed above, Applicants' belief that Claims 10 and 14 recite patentable subject matter in their current form, Applicants have not made such amendments in this Response.

For at least these reasons, Applicants respectfully submit that Claims 10 and 14 recite patentable subject matter. Thus, Applicants respectfully request that the rejections of Claims 10 and 14 be withdrawn.

Section 101 Rejections of Claims 1 through 9

The Office Action rejects Claims 1-9 under 35 U.S.C. § 101 and contends that the claimed invention is directed to non-statutory subject matter. Applicants respectfully traverse these rejections.

At the outset, Applicants believe the Office Action has improperly characterized Claims 1-9 as being "directed to an apparatus where all of the elements would reasonably be interpreted by one of ordinary skill in light of the disclosure as software, such that the apparatus is software per se." Nevertheless, even assuming Claims 1-9 are entirely software per se, the United States Court of Appeals for the Federal Circuit has recently held that

software code alone qualifies, without question, as patentable subject matter under 35 U.S.C. § 101. *See Eolas Tech Inc. v. Microsoft Corp.*, 399 F.3d 1325, 1339 (Fed. Cir. 2005).

For at least these reasons, Applicants respectfully submit that Claims 1-9 recite patentable subject matter. Thus, Applicants respectfully request that the rejections of Claims 1-9 be withdrawn.

Section 103 Rejections

The Office Action rejects Claims 1-14 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,226,649 issued to Bodamer et al. (*"Bodamer"*) in view of U.S. Patent No. 6,122,639 issued to Babu et al. (*"Babu"*). Applicants respectfully traverse these rejections.

Claim 1 is directed to an apparatus for network management in a heterogeneous environment, comprising a relational interface, a relational mapper, and a protocol transaction handler. The relational interface is adapted to receive a relational query from a software application requesting network management information from a specified network device. The relational mapper is adapted to translate the relational query received through the relational interface from the software application, to native protocol messages according to an access protocol associated with the network device. The protocol transaction handler is adapted to handle the native protocol messages as a transaction with the network device, and return a result of the transaction to the software application. *Bodamer* does not disclose each of these limitations.

The Office Action relies on the passage at col. 15, lines 17-27 of *Bodamer* as teaching "a relational mapper adapted to translate the relational query received through the relational interface from the software application, to native protocol messages according to an access protocol associated with the network device" of Claim 1. *See Office Action*, page 4. Applicants respectfully traverse this reliance. According to the passage, "[i]f the client statement is a call using the passthrough SQL module 207, the client statement is intercepted and mapped onto the generic API 212 to the agent 300 corresponding to the referenced foreign database system 208 in step 506." *See Bodamer*, col. 15, lines 23-27. However,

mapping a client statement onto an application, such as occurs with API (Application Programming Interface), fails to disclose, teach, or suggest translating a relational query "to native protocol messages according to an access protocol associated with the network device" of Claim 1. As a result, *Bodamer* does not disclose the apparatus of Claim 1, for example a relational mapper is adapted to translate the relational query received through the relational interface from the software application, to native protocol messages according to an access protocol associated with the network device. For at least these reasons, Applicants respectfully request that the rejection of Claim 1 be withdrawn.

Claims 2-8 each depend, either directly or indirectly from Claim 1. Therefore, for at least the reasons discussed above with regard to Claim 1, Applicants respectfully request that the rejections of Claims 2-8 be withdrawn.

Claims 15-16 each depend, either directly or indirectly from Claim 1. Therefore, for at least the reasons discussed above with regard to Claim 1, Claims 15-16 are allowable.

Similar to Claim 1, Claims 9-11 include limitations related to a relational interface adapted to receive a relational query from a software application requesting network management information from a specified network device. For at least those reasons discussed above with regard to Claim 1, Applicants respectfully contend that *Bodamer* does not disclose each of these limitations. Therefore, Applicants respectfully request that the rejection of Claims 9-11 be withdrawn.

Claims 12-14 each depend, either directly or indirectly from Claims 10 and 11, respectively. Therefore, for at least the reasons discussed above with regard to Claim 1, Applicants respectfully request that the rejections of Claims 12-14 be withdrawn.

Claims 17-20 each depend, either directly or indirectly from Claims 10 and 11. Therefore, for at least the reasons discussed above with regard to Claim 1, Claims 17-20 are allowable.
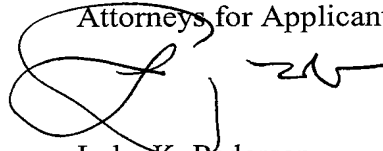
Conclusions

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other apparent reasons, Applicants respectfully request full allowance of all pending Claims. If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicants stands ready to conduct such a conference at the convenience of the Examiner.

Applicants believe no fee is due. However, should there be a fee discrepancy, the Commissioner is hereby authorized to charge any required fees or credit any overpayments to Deposit Account No. **02-0384** of **Baker Botts L.L.P.**

Respectfully submitted,

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